IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4779 OF 2006

Bajarang Parsu Mulik and ors. ..Petitioners

Vs.

Dattatraya Bajarang Mulik ..Respondent

Mr. P.A. Pol for petitioners.

CORAM: B.H. MARLAPALLE, J.

Date : August 9, 2006.

P.C.:

1. Heard Mr. Pol the learned counsel for the petitioners who are the defendants in Regular Civil Suit No. 365 of 2004.

2. In the said suit the trial court was pleased to allow the application for temporary injunction in respect of the suit property listed in Schedules A, B and C and such a prayer in the property listed in Schedule D was turned down. The defendants, therefore, filed Misc. Civil Appeal No.36 of 2005 and the learned District Judge at Thane was pleased to further modify the order of temporary injunction vide his Judgment and Order dated 16/8/2005. The Lower

Appellate Court confined injunction order only in respect of property at Schedules A and B and the application at Exh.5 filed in the suit came to be dismissed as far as defendant nos.2 to 5 were concerned. It further observed that defendant nos.6 and 7 were unnecessarily dragged in the litigation when they are not concerned with the dispute.

3. The plaintiff, therefore, filed an amendment application under Order VI Rule 17 of C.P.C. on or about 7/10/2005 and the said application came to be marked as Exhibit 37. The defendants filed their say and opposed the said application. The learned Judge of the trial court has allowed the said amendment application by his order dated 15/4/2006 and hence this petition.

4. The amendments sought by the application at Exh.37 were, (a) deletion of defendant nos.6 and 7, (b) details of the suit property in Schedule A i.e. boundaries etc. and (c) the numbers of the property in Schedule C. The learned Judge of the trial court noted that in the plaint the schedules to the properties were attached but some of the properties

details as survey number and boundaries etc. were not mentioned and, therefore, it was in the interest of justice that the said amendments were allowed. As far as property in schedule A is concerned, for which there is an order of interim injunction operating against the defendants, there cannot be an opposition on the basis that the details of the properties allowed to be amended or incorporated, brought in totally new property. Therefore, the view taken by the learned Judge of the trial court in allowing the amendment application cannot be termed as perverse or grossly erroneous so as to call for interference and, therefore, the petition fails.

5. The petition is hereby rejected.

(B.H. Marlapalle,J.)